

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THE CHASE MANHATTAN BANK,	:
As Collateral Agent,	:
	:
Plaintiff,	:
v.	:
	:
IRIDIUM AFRICA CORPORATION; IRIDIUM	:
CANADA, INC.; IRIDIUM CHINA (HONG KONG)	:
LTD.; IRIDIUM INDIA TELECOM LTD.; IRIDIUM	:
MIDDLE EAST CORPORATION; IRIDIUM	:
SUDAMERICA CORPORATION; KHRUNICHEV	:
STATE RESEARCH AND PRODUCTION SPACE	:
CENTER; KOREA MOBILE TELECOMMUNICATIONS	: Civil Action No:
CORPORATION; LOCKHEED MARTIN CORPORATION;	: 00-564 JJF
MOTOROLA, INC.; NIPPON IRIDIUM (BERMUDA)	:
LTD.; PACIFIC ELECTRIC WIRE & CABLE CO.,	:
LTD.; RAYTHEON COMPANY; SPRINT IRIDIUM,	:
INC.; STET-SOCIETÀ FINANZIARIA TELEFONICA	:
PER AZIONI; THAI SATELLITE	:
TELECOMMUNICATIONS CO., LTD.; and VEBACOM	:
HOLDINGS, INC.,	:
	:
Defendants.	:

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Attorneys for Defendant Pacific Electric Wire & Cable Co., Ltd.

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**OPINION**

February 13, 2004

Wilmington, Delaware

**Farnan, District Judge.**

Presently before the Court are the Objections Of Plaintiff Pursuant To 28 U.S.C. § 636(b) To Report And Recommendation Of Magistrate Judge Regarding Motion Of Defendant Pacific Electric Wire and Cable Co., Ltd. ("PEWC") To Set Aside Default Judgment. (D.I. 647.) For the reasons set forth below, the Court will adopt the Magistrate Judge's Report and Recommendation to set aside the Default Judgment against PEWC.

**BACKGROUND**

This dispute arises from an \$800 million loan The Chase Manhattan Bank ("Chase") made to Iridium LLC in 1998 ("the Chase Loan"). The Members of Iridium LLC were obligated to pay Reserve Capital Call ("RCC") Obligations pursuant to Iridium's LLC Agreement ("LLC Agreement") in order to secure various loans Iridium LLC acquired. Chase alleges that the RCC Obligations were pledged to secure the Chase Loan.

PEWC, a Taiwanese corporation, contends that it is no longer a Member of Iridium LLC because it transferred all of its interests in Iridium LLC to Pacific Asia Communications, Ltd. ("Pacific Asia"). As a condition of this transfer, PEWC signed an Agreement of Indirect Owner Guaranty ("AIO"), in which PEWC consented to jurisdiction in Delaware and appointed the Corporation Trust Company as its agent for service of process. Further, the AIO provides that PEWC would guarantee Pacific Asia's performance of the RCC Obligations.

Following Iridium LLC's default on the Chase Loan, Chase attempted to call the RCC Obligations. The Members raised various defenses and Chase initiated the instant lawsuit to recover the RCC Obligations. PEWC did not answer Chase's Complaint and Summons and the Clerk of the Court entered a Default Judgment against PEWC on November 14, 2000. (D.I. 88.) Subsequently, PEWC moved to set aside the Default Judgment for excusable neglect and the Magistrate Judge, in her Report and Recommendation, granted the motion. Chase's objections to that Report and Recommendation are now before the Court.

#### **I. Parties' Contentions**

Chase makes several objections to the Magistrate Judge's Report and Recommendation, arguing first that her finding of "excusable neglect" has no support. Chase contends that the Magistrate Judge erred because she did not consider the AIO as a basis for jurisdiction over PEWC, that it was prejudiced by PEWC's year-long delay in filing its motion to set aside the Default Judgment, and that PEWC willfully decided not to respond to Chase's Complaint and Summons. Second, Chase contends that PEWC's motion to set aside the default judgment was not timely. Third, Chase contends that if the Court adopts the Magistrate Judge's Report and Recommendation and sets aside the Default Judgment, the Court should make the set aside contingent on PEWC's compliance with four conditions that it proposes. (D.I. 647.)

In response, PEWC contends that the Magistrate Judge's finding of "excusable neglect" was correct and should be adopted by the Court. PEWC also contends that its motion to set aside the Default Judgment was timely. Finally, PEWC maintains that Chase's proposed conditions on setting aside the Default Judgment are "punitive" and should be rejected by the Court. (D.I. 670.)

#### **STANDARD OF REVIEW**

When reviewing a dispositive matter decided by a magistrate judge, a district court shall conduct a de novo determination of those portions of a report and recommendation to which a party objects. See 28 U.S.C. § 636(b)(1)(B). A motion to set aside a default judgment is a dispositive matter. D. Del. L.R. 72.1(a)(3). Under Section 636(b)(1)(B), a district court "may accept, reject, or modify, in whole or in part [the magistrate judge's] findings and recommendations, and may also receive further evidence." Haines v. Liggett Group Inc., 975 F.2d 81, 91 (3d Cir. 1992) (inner quotation omitted).

#### **DISCUSSION**

The Third Circuit has held that when deciding whether to set aside a default judgment, courts should resolve doubts in favor of deciding the matter on the merits. Zawadski de Bueno v. Bueno Castro, 822 F.2d 416, 420 (3d Cir. 1987) (noting that the Third Circuit generally disfavors default judgments). The Third Circuit has prescribed four factors a court should use when deciding whether

to set aside a default judgment, including: 1) whether lifting the default judgment will prejudice the plaintiff; 2) whether the defendant has a meritorious defense; 3) whether the defendant's conduct in defaulting was excusable or culpable; and 4) whether alternative sanctions are effective. Id. (citing Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984)).

#### **I. Whether PEWC Has A Meritorious Defense**

The Magistrate Judge incorrectly determined that PEWC has a meritorious jurisdictional defense. In reaching her conclusion, the Magistrate Judge did not consider the AIO. The AIO provides that PEWC waived its objection to personal jurisdiction in Delaware and appointed the Corporation Trust Company as its agent for service of process. (D.I. 50; Ex. D.) Therefore, the Court concludes that even if PEWC completed the transfer of its interests in Iridium LLC to Pacific Asia, PEWC's execution of the AIO precludes it from asserting a jurisdictional defense.

However, the Court concludes that PEWC may have a meritorious defense if in later proceedings the Court determines that the LLC Agreement was not validly amended such that the Chase Loan was secured by the RCC Obligations. A movant's defense is meritorious if its allegations, established at trial, would be a complete defense. Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 74 (3d Cir. 1987). If the LLC Agreement was not validly amended, PEWC would not be liable as a surety because the primary obligor, Pacific Asia, would not have

defaulted on its obligation to pay its RCC Obligations to Chase. Accordingly, because PEWC's asserted defense if established would be a complete defense, the Court concludes that PEWC has a meritorious defense for the purposes of a Rule 60(b) Motion. Id.

## **II. Whether PEWC's Conduct Was Culpable or Excusable**

Although PEWC submitted to jurisdiction in Delaware when it executed the AIO, in viewing the instant dispute in favor of deciding the case on the merits, see Zawadski, 822 F.2d at 420, the Court cannot conclude that PEWC's oversight as to the effect of the AIO was willful or in bad faith.

In its Complaint, Chase does not identify the AIO as a basis for PEWC's liability, jurisdiction, or proper service. And, while the Court will consider the AIO in its determinations despite Chase's failure to include the AIO in its Complaint, it is reasonable that a foreign corporation would not recognize the effect of its previous jurisdictional waiver in light of Chase's omission.

In the Third Circuit, courts take an "accommodating approach" toward foreign corporations, see Feliciano v. Reliant Tooling Company, Ltd., 691 F.2d 653, 657 (3d Cir. 1982), particularly when the foreign corporation's reluctance to act stems from a fear that it may involuntarily submit itself to suit in the United States. Id. at 658. Based upon Chase's omissions and taking into account PEWC's status as a foreign corporation, the Court concludes that PEWC's conduct was not willful or in bad faith.

Similarly, the Court views PEWC's failure to move to set aside the Default Judgment until approximately one year had passed as negligent, but not willful. In support of its contention that the Court should not set aside the default judgment, Chase cites Amoco Overseas Oil Co. v. Compagnie Nationale Algerienne de Navigation, 656 F.2d 648, 656 (S.D.N.Y. 1979), for the proposition that a party's one-year delay in moving to set aside a default judgment should be considered unreasonable. (D.I. 647 at 15.) However, unlike the facts in this case, the movant in Amoco "offer[ed] no explanation to support its substantial delay in attempting to reopen the default judgment." Id. Here, PEWC contends that even though it was aware of the Default Judgment it had a good faith belief that it was not subject to the Court's jurisdiction until Judge McKelvie on September 28, 2001, decided STET-Società Finanziaria Telefonica Per Azioni's ("STET") motion to dismiss. It was at this point, PEWC contends, that it first became aware that its jurisdictional defense might be invalid. Following this recognition, PEWC contends that it quickly moved to set aside the Default Judgment.

As noted above, although PEWC's belief that it was not subject to the Court's jurisdiction was incorrect and potentially negligent, the Court cannot conclude that it amounts to bad faith or willful conduct. Based on the liberal Rule 60(b) standards, the Court does not view PEWC's failure to respond to Chase's Complaint as a trial strategy gone awry that it must now live with. See Zawadski De Bueno

v. Bueno Castro, 822 F.2d 416, 421 (3d Cir. 1987). Instead, the Court concludes that PEWC's conduct, although careless, was not willful or in bad faith.

### **III. Whether Setting Aside the Default Judgment Will Unfairly Prejudice Chase**

After reviewing the submissions of the parties and the Magistrate Judge's Report and Recommendation, the Court concludes that the Magistrate Judge did not err in finding that Chase will not be unfairly prejudiced if the Court were to set aside the Default Judgment. As an initial matter, the Court observes that the costs Chase expended in its attempts to enforce the Default Judgment will not be wasted if PEWC is found liable on the merits. And, in the Third Circuit, "[d]elay[s] in realizing satisfaction on a claim rarely serve . . . to establish the degree of prejudice sufficient to prevent the opening [of] a default judgment entered at an earlier proceeding." Emcasco, 834 F.2d at 74 (inner quotation omitted).

Further, the Court is persuaded that any discovery Chase will be forced to conduct as a result of the set aside of the Default Judgment will be minimal. PEWC's defense, that the LLC Agreement was not validly amended, is similar to the defenses of the other Members, and therefore, Chase will not be forced to prepare for additional defenses at trial. Moreover, PEWC has represented that it will not request Chase to reopen any discovery that Chase already provided to the other Members. (D.I. 670 at 21.) Based on these considerations, the danger of the "irretrievable loss of evidence, the inevitable



dimming of witnesses' memories, or the excessive and possibly irreparable burdens or costs imposed on the opposing party" are minimal. See Scarborough v. Eubanks, 747 F.2d 871, 876 (3d Cir. 1984). Accordingly, the Court concludes that the absence of unfair prejudice weighs in favor of setting aside the Default Judgment.

#### **IV. Chase's Conditions**

Chase contends that if the Court sets aside the Default Judgment, it should do so contingent on four conditions. Chase requests that the Court order PEWC to: 1) post a bond for the full amount of its RCC Obligations; 2) pay all of Chase's attorneys' fees and costs Chase incurred in enforcing the Default Judgment; 3) pay all of Chase's attorneys' fees and costs expended in subsequent discovery with PEWC; and 4) immediately produce all documents Chase requires and order PEWC to make its witnesses available for depositions in New York. (D.I. 647 at 16-17.)

In the Court's view, Chase's proposed conditions are excessive. Beginning with the first condition, Chase does not dispute that PEWC has over two billion dollars in assets. Therefore, in the event Chase obtains a judgment against PEWC it is unlikely that PEWC will be without assets to satisfy Chase's award. Accordingly, the Court will not require PEWC to post a bond for the full amount of its RCC Obligations.

The Court will also not order PEWC to reimburse Chase for the costs it incurred in enforcing the Default Judgment, specifically,

expenses incurred in uncovering PEWC's assets in the United States. Chase's expenditures will not be wasted if Chase obtains a judgment against PEWC. Further, the Court will not order PEWC to pay Chase for attorneys' fees it will expend in future discovery with PEWC because PEWC has agreed that it will not force Chase to reopen any discovery already conducted with other Members. It is the role of the Federal Rules of Civil Procedure to allocate the costs civil litigants expend in discovery, and, without good reason, the Court will not depart from the Rules. The Court will deny Chase's request for the Court to order PEWC to make all of its witness available in New York for similar reasons.

However, the Court will order PEWC to reimburse Chase for the attorneys' fees it expended in securing the Default Judgment and in filing and defending the instant motion. In Int'l Broth. of Elec. Workers, Local Union No. 313 v. Skaggs, 130 F.R.D. 526, 530 (D. Del., 1990), the court held that awarding attorneys' fees is appropriate when doing so avoids "the harshness of a default [and permits a result] equally effective yet less severe." Id. (citing Emcasco, 834 F.2d at 73). In this case, PEWC negligently failed to recognize that its execution of the AIO submitted it to personal jurisdiction in Delaware and appointed the Corporation Trust Company as its agent for service of process. If not for this oversight, PEWC would have responded to Chase's Complaint and Summons and not have forced Chase to incur unnecessary legal fees. For these reasons, the

Court will award Chase the attorneys' fees and costs it expended in securing the Default Judgment and in filing and defending the instant motion.

An appropriate Order will be entered.

THE CHASE MANHATTAN BANK,  
As Collateral Agent,

V.

IRIDIUM AFRICA CORPORATION; IRIDIUM CANADA, INC.; IRIDIUM CHINA (HONG KONG) LTD.; IRIDIUM INDIA TELECOM LTD.; IRIDIUM MIDDLE EAST CORPORATION; IRIDIUM SUDAMERICA CORPORATION; KHRUNICHEV STATE RESEARCH AND PRODUCTION SPACE CENTER; KOREA MOBILE TELECOMMUNICATIONS CORPORATION; LOCKHEED MARTIN CORPORATION; MOTOROLA, INC.; NIPPON IRIDIUM (BERMUDA) LTD.; PACIFIC ELECTRIC WIRE & CABLE CO., LTD.; RAYTHEON COMPANY; SPRINT IRIDIUM, INC.; STET-SOCIETÀ FINANZIARIA TELEFONICA PER AZIONI; THAI SATELLITE TELECOMMUNICATIONS CO., LTD.; and VEBACOM HOLDINGS, INC.,

Civil Action No:  
00-564 JJF

At Wilmington, this 13th day of February, 2004, for the reasons discussed in the Opinion issued this date;

1) The Magistrate Judge's Report and Recommendation (D.I. 644)  
is **ADOPTED**;

1) The Default Judgment entered against Defendant Pacific Electric Wire and Cable Co., Ltd. ("PEWC") (D.I. 88) is **SET ASIDE**;

2) The Objections Of Plaintiff Pursuant To 28 U.S.C. § 636(b)  
To Report And Recommendation Of Magistrate Judge Regarding

Motion Of Defendant PEWC To Set Aside Default Judgment  
(D.I. 647) (the "Motion To Set Aside The Default Judgment")  
are **DENIED**.

- 3) PEWC shall reimburse Plaintiff the attorneys' fees and costs Plaintiff incurred in securing the Default Judgment against PEWC and expended in filing and defending the Motion To Set Aside The Default Judgment. (D.I. 647.)

JOSEPH J. FARNAN, JR.  
UNITED STATES DISTRICT JUDGE